

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

In the Matter of)

Revision of Part 22 and Part 90 of the)
Commission's Rules To Facilitate Future)
Development of Paging Systems)

WT Docket No. 96-18

Implementation of Section 309(j) of the)
Communications Act -- Competitive Bidding)

PP Docket No. 93-253

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**COMMENTS OF THE PERSONAL COMMUNICATIONS INDUSTRY
ASSOCIATION ON GEOGRAPHIC LICENSING AND COMPETITIVE
BIDDING PROPOSALS**

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March 18, 1996

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**COMMENTS OF THE PERSONAL COMMUNICATIONS INDUSTRY
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BIDDING PROPOSALS**

The Personal Communications Industry Association ("PCIA"),¹ by its attorneys, hereby submits its comments on the Commission's proposals for adopting geographic licensing and competitive bidding rules for paging authorizations.² As detailed below, PCIA

¹ PCIA is the international trade association created to represent the interests of both the commercial and the private mobile radio service communications industries. PCIA's Federation of Councils includes: the Paging and Narrowband PCS Alliance, the Broadband PCS Alliance, the Specialized Mobile Radio Alliance, the Site Owners and Managers Association, the Association of Wireless System Integrators, the Association of Communications Technicians, and the Private System Users Alliance. In addition, as the FCC-appointed frequency coordinator for the 450-512 MHz bands in the Business Radio Service, the 800 and 900 MHz Business Pools, the 800 MHz General Category frequencies for Business Eligibles and conventional SMR systems, and the 929 MHz paging frequencies, PCIA represents and serves the interests of tens of thousands of licensees.

² See *Revision of Part 22 and Part 90 of the Commission's Rules To Facilitate Future Development of Paging Systems*, FCC 96-52 (Feb. 9, 1996) (Notice of Proposed Rule Making) ("Notice"). PCIA filed comments on March 1, 1996, and March 11, 1996, urging the Commission to revise the terms of the freeze imposed on the filing and processing of paging applications during the pendency of this rulemaking. Comments on the substantive proposals contained in the *Notice* are due on March 18, 1996; reply comments thereon are due by April 2, 1996.

believes that, where appropriately deployed, market area licensing will facilitate the provision of paging service to the public. The Commission should ensure that its geographic licensing rules and the procedures for transitioning to such a scheme do not disrupt any more than necessary the existing offerings of paging licensees and the use of paging services by the public. Similarly, the Commission's implementation of competitive bidding rules and policies should not sacrifice the benefits of existing paging services used by the public in favor of uncertain auction revenues.

I. INTRODUCTION AND SUMMARY

On February 8, 1996, the Commission adopted the *Notice*, summarizing its proposals as follows:

[W]e propose to transition to a geographic licensing approach where we issue single licenses for geographic areas that encompass many sites, rather than individual licenses on a transmitter-by-transmitter basis. We also propose to adopt competitive bidding rules for mutually exclusive paging applications, so that available channels may be assigned rapidly to applicants who will expedite service to the public.³

³ *Notice*, ¶ 1. The *Notice* also imposed a freeze on the acceptance of new Part 22 and Part 90 applications, with certain exceptions, and set forth the Commission's plans for the processing of applications already on file as of the adoption of the *Notice*. The comments on the Commission's interim processing proposal as well as the freeze policies demonstrate the severe problems resulting from that portion of the decision. Virtually all commenters in the initial set of submissions on interim licensing urged the Commission to take immediate action to ameliorate the problems faced by paging licensees in providing service to the public (or for their own internal operations) as a result of the freeze. Accordingly, PCIA renews its urgent request that the Commission promptly modify the terms of the freeze and the policies concerning the processing of pending applications to permit licensees more effectively to modify their facilities to meet consumer demand and to respond to competitive pressures.

The Commission further indicated that its considerations were guided by "the statutory objective of regulatory symmetry for all Commercial Mobile Radio Services"⁴ and the desire to ensure that "competitive success is dictated by the marketplace, rather than by regulation."⁵

First and foremost, it is critical that the Commission complete action on this rulemaking on an expedited basis. The longer paging licensees are limited in their flexibility to make modifications, whether under the current freeze or a modified version thereof, the more seriously the users and providers of paging services will be harmed. Despite the Commission's many current obligations, PCIA urges the Commission to issue rules in this proceeding and initiate auctions in the next few months, if successful competition in the paging marketplace is to survive.

PCIA continues to endorse strongly the Commission's proposals to employ market area licensing for 931 MHz authorizations. PCIA believes that the public, the Commission, and licensees will benefit in a number of respects from the adoption of market area licensing for these frequencies.

In contrast, PCIA has previously opposed implementation of market area licensing for 929 MHz exclusive frequency channels and for the common carrier lower band frequencies. In the case of 929 MHz, the Commission had only relatively recently adopted a plan for national, regional, and local exclusivity on 35 of the 40 929 MHz channels available for

⁴ *Id.*, ¶ 2.

⁵ *Id.*

licensing under Part 90. Because licensees in that band still are in the midst of implementing this plan, which is a form of geographic-based licensing, PCIA had concluded that converting to geographic licensing at this time would be very disruptive, particularly after a period of transition and uncertainty. Despite this prior opposition, PCIA now reluctantly concurs in the Commission's adoption of market area licensing for these channels.

In the case of the common carrier lower band frequencies, PCIA opposed a transition to geographic-based licensing due to the maturity of operations on these frequencies, the disruptive effect of converting existing operations to market-based authorizations, and the less pressing need to obtain the benefits of geographic authorizations. As with 929 MHz, however, PCIA now reluctantly concludes that adoption of the Commission's proposal to deploy market area licensing in these bands should be adopted.

PCIA continues, however, to oppose implementation of geographic licensing at this time for the Part 90 shared channels. Before geographic authorizations are even feasible, the Commission must first resolve other critical questions, including exclusivity issues and the accommodation of private licensees now using the subject frequencies. These matters, however, can be considered without freezing the submission and processing of applications. Accordingly, the Commission should immediately resume the acceptance and review of applications for Part 90 shared frequency channels, and defer consideration of issues related to the appropriate licensing of such channels to a subsequent rulemaking.

PCIA believes that, in the bands where geographic licensing is adopted, the plan should include the following elements:

- Service areas should be based on Major Trading Areas.

- Incumbent operators should receive full interference protection from the market area licensee for their authorized facilities.
- Market area licensees should have an interference contour that covers at least 10 percent of the market's population within one year of license grant; should provide coverage to one-third of the population in three years; and should provide coverage to two-thirds of the population in five years. Licensees should meet these coverage requirements using their own facilities.
- Failure to meet the coverage requirements should result in automatic cancellation of the geographic license.
- Incumbent systems should be protected from interference based on the standards contained in Tables E-1 and E-2 of Section 22.537 of the Commission's Rules.
- The maximum power for 929 MHz non-nationwide facilities should be increased to 3500 watts, and the height-power limit for 929 MHz should be eliminated.
- To protect adjacent geographic licensees, carriers should be required to reduce power at the boundary or enter into agreements for other arrangements.
- No channel aggregation limit is required.

PCIA believes that the public interest would be served by adoption of a two-step transition to geographic licenses. In step one, the Commission would process and grant applications by existing licensees already providing coverage in an MTA that exceeds the five-year coverage benchmark. In step two, the remaining market area licenses would be available for application by any qualified entity and would be awarded, where mutually exclusive applications are filed, by competitive bidding.

PCIA supports many of the competitive bidding elements applied to other services. Different rules and policies are required for some components, however, in recognition of the high level of encumbered paging spectrum. In that regard, applicants should identify each

specific frequency in each specific market for which they are applying, and should submit a carefully set upfront payment for each frequency/market combination. In addition, applicants that do not already provide service coverage to at least 10 percent of the market population should post a performance bond.

The Commission should employ a non-simultaneous closing rule, and should group the paging frequencies into two components for the purpose of simultaneous auctions (929 MHz and 931 MHz authorizations in one auction, lower band common carrier frequencies in a separate auction). In light of the number of authorizations to be included in each auction, the Commission should ensure that a significantly long interval between bidding rounds is established, particularly for the initial rounds.

Because of the nature of the paging marketplace, there is no need for the Commission to adopt special provisions for designated entities to participate in the paging auctions. A set-aside of frequencies is not practical. Grant of bidding credits is not necessary, can be used to distort the competitive bidding process, and likely will not serve the intended goal.

Finally, the Commission should permit auction winners to proceed, at their own risk, with facilities construction and modification immediately at the end of the auction.

II. IT IS ESSENTIAL THAT THE COMMISSION PROMPTLY CONCLUDE THIS PROCEEDING AND THAT AUCTIONS BE INITIATED AS SOON AS POSSIBLE

It is essential that the Commission act as quickly as possible to resolve the open issues in this proceeding, and then ensure that auctions are initiated, pursuant to the applicable rules and policies, in as short a time frame as possible. Even if the Commission grants some relief

from the terms of the freeze on paging applications that currently is in place, existing operators and new entrants will still be restricted in their opportunity and ability to meet customer demand. Such limitations have adverse effects for consumers, carriers, businesses, governments, and the economy. Moreover, the high level of competition now found in the paging marketplace is increasingly threatened the longer any freeze is in place.

If, despite the substantial and virtually unanimous record in the interim licensing phase of this proceeding, the Commission were to decide that the freeze should not be altered, the importance of prompt Commission action on the substantive proposals contained in this rulemaking would be even more critical. Any freeze apparently will remain in place not only until the Commission issues its decision in this proceeding but also through the first set of auctions. The longer the period of time until those first auctions are held, the more the paging marketplace will be devastated. The Commission accordingly should set final resolution of this proceeding as one of its central priorities in the next few months.

III. GEOGRAPHIC LICENSING IS APPROPRIATE FOR ONLY SOME OF THE PART 22 AND PART 90 FREQUENCIES

The Commission has "tentatively conclude[d] that the public interest would be served by converting to geographic licensing for all paging channels that are licensed on an exclusive, non-nationwide basis."⁶ This would include the 931 MHz and 929 MHz

⁶ Notice, ¶ 21.

channels,⁷ other than those licensed on a nationwide basis,⁸ as well as the lower band common carrier channels.⁹ The Commission also seeks comment on "whether and when to use geographic licensing for lower band PCP channels . . . , which currently are licensed on a shared basis."¹⁰ The *Notice* finds that "geographic licensing is particularly suitable for paging, because the service has evolved away from single-site systems toward multi-site systems that cover large geographic areas."¹¹ The *Notice* also identifies a number of benefits from adopting geographic licensing for Part 22 and Part 90 facilities.¹²

A. PCIA Strongly Endorses the Adoption of Market Area Licensing for the 931 MHz Frequencies and Reluctantly Concurs in the Commission's Proposal as Applied to 929 MHz Exclusive Frequencies

The Commission believes that "geographic licensing is particularly appropriate for 931 and 929 MHz paging channels, because of the large number of paging operators who are developing wide-area systems in these bands."¹³ The *Notice* reflects the Commission's conclusion that market area licensing for these frequencies will promote regulatory parity,

⁷ *Id.*, ¶¶ 24-25. The *Notice* apparently includes the shared 929 MHz frequencies within the proposals for the 929 MHz exclusive frequencies, although this is not clear.

⁸ *Id.*, ¶¶ 26-27.

⁹ *Id.*, ¶¶ 28-30.

¹⁰ *Id.*, ¶ 31.

¹¹ *Id.*, ¶ 21.

¹² *Id.*

¹³ *Id.*, ¶ 24.

"decrease the filing burden on 931 MHz and 929 MHz licensees and provide additional operational flexibility," and "expedite the processing of applications."¹⁴

1. 931 MHz

PCIA has advocated for a number of years that 931 MHz paging licenses be granted on a market basis rather than on a transmitter-by-transmitter basis. PCIA's previous analysis of the application requirements and marketplace environment indicated that geographic licensing would: provide greater flexibility to the operators in these frequencies; reduce the number of licensee filings; minimize processing delays; provide greater parity with narrowband personal communications service ("PCS") licensees; and strengthen carriers' ability to obtain capital by providing licensees with a more understandable package of rights. PCIA accordingly endorses the Commission's proposal for 931 MHz, and agrees with the numerous public interest benefits that will result from a careful implementation of this plan.

2. 929 MHz

In contrast, PCIA previously has opposed implementation of similar market-based licensing for 929 MHz exclusive frequencies. Licensees in this service are midway through implementing an exclusivity plan originally adopted by the Commission just a couple of years ago.¹⁵ Indeed, the Commission only very recently acted on petitions for reconsideration of

¹⁴ *Id.*, ¶ 25.

¹⁵ *See Amendment of the Commission's Rules To Provide Channel Exclusivity to*
(continued...)

the *PCP Exclusivity Order* in which interested parties sought clarification of the Commission's plan as well as modification of its terms.¹⁶ The operators of systems in the 929 MHz frequencies had developed reasonable reliance on the Commission's recent policies with respect to their ability to expand and fill out their systems based on the exclusivity policies. Accordingly, PCIA had concluded that adoption of market area licensing would be highly disruptive for a portion of the paging marketplace that already had experienced a great deal of recent regulatory change.

Nonetheless, in light of the Commission's tentative conclusions in this proceeding, as well as the Congressional mandates for regulatory parity among commercial mobile radio services ("CMRS")¹⁷ and the Commission's implementation thereof,¹⁸ PCIA now reluctantly supports transitioning to geographic licensing for the exclusive frequencies in the 929 MHz band.¹⁹ Given the Commission's previous analysis, it appears unlikely that the Commission will adopt differing regulatory regimes for each of the 931 MHz and 929 MHz

¹⁵(...continued)

Qualified Paging Systems at 929-930 MHz, 8 FCC Rcd 8318 (1993) (Report and Order) ("*PCP Exclusivity Order*").

¹⁶ *See Amendment of the Commission's Rules To Provide Channel Exclusivity to Qualified Private Paging Systems at 929-930 MHz*, FCC 96-53 (Feb. 13, 1996) (Memorandum Opinion & Order) ("*PCP Exclusivity Reconsideration Order*").

¹⁷ Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, § 6002(b)(2)(A), (B), 107 Stat. 312 (1993).

¹⁸ *Implementation of Sections 3(n) and 332 of the Communications Act -- Regulatory Treatment of Mobile Services*, 9 FCC Rcd 7988 (1994) (Third Report and Order) ("*CMRS Third Report and Order*").

¹⁹ As discussed in Section III.C *infra*, PCIA opposes market area licensing for the shared frequencies in the 929 MHz band.

bands. PCIA believes that expeditiously resolving the licensing rules and policies will best serve the public interest, particularly in light of the outstanding freeze on the submission of applications for new and modified facilities. This will permit operators in the 929 MHz frequencies more quickly to resume system modifications necessary to meet customers' needs and to adapt their business plans to the revised regulatory environment ultimately adopted by the Commission in this proceeding. PCIA has concluded that this goal can best be achieved by lending its support to the Commission's proposal for the adoption of geographic licensing in 929 MHz as well as 931 MHz.

3. Nationwide Frequencies

The *Notice* proposes "to exclude from our plan those channels that already have been assigned to single licensees on a nationwide basis under [the Commission's] existing rules."²⁰ This would exclude 931.8875, 931.9125, and 931.9375 MHz under Part 22 as well as "all PCP channels for which licensees have met the construction requirements for nationwide exclusivity as of the adoption date of this *Notice*."²¹ PCIA agrees with the Commission that these frequencies should not be subject to market area licensing based on some service area smaller than "nationwide."

²⁰ *Notice*, ¶ 26.

²¹ *Id.*

4. Build Out of 929 MHz Exclusive Systems

In discussing the nationwide frequencies, the *Notice* states that:

[L]icensees who have qualified for nationwide exclusivity on a channel must meet the construction and service requirements set forth under our current rules in order to retain their nationwide assignments. If the licensee fails to comply with such requirements, we tentatively conclude that the channel should be made available for geographic licensing, and such licensee would receive protection as an incumbent only for those areas where it has completed construction and commenced service.²²

PCIA urges the Commission to make clear that any 929 MHz exclusive frequency nationwide licensees with time remaining on their exclusivity construction periods, as specified in Section 90.495 of the Commission's Rules,²³ may complete system build out and retain their exclusive licenses. A similar policy should be applied to regional and local 929 MHz exclusive frequency license holders as well, to permit them to construct facilities pursuant to any outstanding construction authorizations and retain their frequency exclusivity. Allowing completion of authorized construction is required by equitable application of Commission rules and policies; it would be wholly inappropriate for the Commission to revoke or modify the authorization of any 929 MHz exclusive frequency license holder that is still complying with the terms of its authorization by completing build out of required facilities. Only if, at the end of the construction period now prescribed by Section 90.495, a licensee has failed to

²² *Id.*

²³ 47 C.F.R. § 90.495 (1994).

meet the construction requirements should the authorization -- whether nationwide, regional, or local -- be modified.

B. PCIA Reluctantly Supports Adoption of Market Area Licensing for the Lower Band Common Carrier Frequencies

The *Notice* tentatively concludes that "geographic licensing should be extended to [common carrier] channels in the 35, 43, 152, and 454 MHz bands."²⁴ PCIA previously has opposed implementation of geographic licensing in these bands. Use of these bands is more mature than is the case at 929 MHz or 931 MHz. PCIA accordingly had concluded that, as a result of the much more mature use of these frequencies, overlaying a market area licensing scheme on existing operations would be highly complex and would have reduced regulatory benefits for licensees, the Commission, and the public. PCIA's original assessment is consistent with the Commission's observations that "[c]urrent licensing activity on the lower paging bands is confined largely to the addition of fill-in sites and minor expansion by existing licensees."²⁵

Despite this assessment, PCIA has determined, as with its views on 929 MHz exclusive frequencies, that the industry is better served by quick Commission resolution of this proceeding, permitting licensees to understand new processing policies and resuming the filing of applications for necessary authorizations. Accordingly, PCIA reluctantly endorses the transition of lower band common carrier paging frequencies to geographic licensing.

²⁴ *Notice*, ¶ 28.

²⁵ *Id.*, ¶ 13.

C. PCIA Opposes Adoption of Market Area Licensing for the Part 90 Shared Channels at This Time

The *Notice* solicits advice from interested parties about the most appropriate standards for licensing the shared lower band Part 90 frequencies. In particular, the Commission asks for comment on "whether to (1) convert lower band shared PCP channels to exclusive use and implement geographic licensing, (2) issue only a certain number of licenses per shared channel and use competitive bidding to choose among mutually exclusive applications once the limit is reached, or (3) retain the *status quo*."²⁶

PCIA opposes adoption of market area licensing for the Part 90 shared frequencies at this time. This opposition extends to the lower band Part 90 frequencies as well as the five channels at 929 MHz that are licensed on a shared basis. There appears to be no reason to treat the latter shared frequencies any differently from the lower band shared channels, so long as all the frequencies are licensed on a shared use basis.

At present, the Commission lacks authority to impose competitive bidding as the method for awarding authorizations in the shared frequencies, since mutual exclusivity currently cannot occur.²⁷ Rather, as the *Notice* apparently recognizes, before the Commission can address implementation of market area licensing and competitive bidding procedures in the current Part 90 shared frequencies, there are a number of prerequisite issues that must be considered and resolved.

²⁶ *Id.*, ¶ 32.

²⁷ See *Notice*, ¶ 15; 47 U.S.C. § 309(j)(1); *Implementation of Section 309(j) of the Communications Act -- Competitive Bidding*, 9 FCC Rcd 2348, 2350-51 (1994).

One essential area that the Commission must address is the matter of exclusivity in these frequencies. PCIA continues to support the proposal it made to the Commission in 1994 for a version of "earned exclusivity."²⁸ PCIA urged the Commission to adopt rules that would "recognize for those paging systems on 152.480, 157.740 and on seven (7) of the eight (8) paging only 460 MHz channels operating on a local basis and regional basis that a paging channel is sufficiently utilized and no further licensees will be assigned to it when a minimum number of transmitters have been constructed and are in operation."²⁹ For local systems, the minimum number would be six contiguous transmitters, with a transmitter being counted for this purpose if it is within at least 37.5 miles of another transmitter in the system and it is not co-located with another transmitter being counted toward the minimum on the same frequency.³⁰ With regional systems, the minimum number would be 70 transmitters, located in no more than 12 adjacent states.³¹

While PCIA believes that its suggested approach is the best balance to accommodate continue shared use of the frequencies while seeking to reduce levels of interference and promote efficient operation, there clearly are alternative approaches for licensing paging

²⁸ Amendment of the Commission's Rules and Regulations Concerning Shared Use of 150 MHz and 460 MHz Paging Frequencies, Petition for Rule Making of the Association for Private Carrier Paging Section of the National Association of Business and Educational Radio, Inc. [now PCIA], RM-7986 (filed July 11, 1994) ("*Petition*").

²⁹ *Id.* at 11.

³⁰ *Id.* at 11-12. Under PCIA's proposal, in New York, Los Angeles, and Chicago, 18 transmitters would be required. *Id.* at 11.

³¹ *Id.* at 12. In the top 30 markets, no transmitter would be counted as part of a regional system unless it also met the standards for local minimum construction requirements.

facilities in the shared frequencies. This fact indicates that resolution of these issues is not likely to be easy, and will require the Commission to ensure that it has obtained comments from a representative cross-section of licensees in these frequencies to ensure that any transition mechanism is not unduly disruptive of current operations and the paging service obtained by members of the public.

Another issue to be addressed by the Commission is the continued accommodation of private licensees in these frequencies. While carrier operations have been the focus of the Commission's rulemaking proposals, there are a large number of entities that hold licenses in these channels for providing internal paging systems. Continued private licensee use of the frequencies likewise raises significant issues that may not be easy to address, particular in light of other actions the Commission may decide to take with respect to the regulatory structure for these frequencies.

Thus, PCIA expects that resolution of these prerequisite issues, followed by consideration of geographic licensing and competitive bidding proposals (if still appropriate in light of the action taken by the Commission on the predecessor issues), will be time consuming, particular in light of the Commission's other commitments at this time. While such issues are under consideration, there is no reason for the Commission not to process applications for facilities authorizations in the shared frequency bands. Indeed, to maintain a freeze on such applications until the relevant matters can be resolved will devastate operations on the shared frequency channels. Likewise, Commission action on the other Part 22 and Part 90 proposals should not be held up by resolution of the complex shared frequency issues.

The Commission accordingly should sever out the shared frequency issues (concerning both lower band Part 90 and the 929 MHz shared frequencies) from this rule making, and consider them separately.³² In addition, the Commission should promptly lift the freeze on the filing and processing of applications for shared frequency authorizations.

IV. GEOGRAPHIC LICENSING MUST BE IMPLEMENTED TO PROMOTE THE PROVISION OF COMPETITIVE PAGING SERVICE TO THE PUBLIC AND TO PROTECT THE EXISTING OPERATIONS OF PAGING SERVICE PROVIDERS

In implementing market area licensing for paging authorizations, the Commission's policies should be designed to ensure that paging licensees will be able to operate on a competitive, cost-effective basis and that they will be able to accommodate customer needs in a responsive manner. In addition, rules must be adopted to protect the existing operations of incumbent licensees that do not become market area licensees and to ensure that unacceptable levels of interference do not occur between adjacent systems operating on the same frequency.

A. MTAs Are the Appropriate Service Area Definition

The Commission has tentatively concluded that Rand McNally Major Trading Areas ("MTAs") "form the most appropriate geographic area boundaries for paging systems,

³² In addition, PCIA renews its request that the Commission implement guidelines "to prevent simultaneous seizure of a shared channel ('key-up overlap') by operators who are co-channel on a frequency within the same service area." *Petition* at 13. This issue could be considered as part of the larger proceeding involving the appropriate licensing structure for the shared frequencies.

because they are economically-defined regions that appear to best mirror the size and development of existing paging systems."³³ PCIA concurs that MTAs most closely approximate the service areas developed by many paging licensees in response to consumer demand, and thus endorses adoption of the Commission's proposal. While MTAs obviously are not a perfect fit for most existing paging systems, PCIA members had concluded that MTAs represented the most rational approach for converting 931 MHz authorizations to market-based licenses. This same definition should be applied to all of the paging bands where the Commission decides to employ geographic licensing.

At the same time, the Commission should explicitly authorize the geographic partitioning of MTAs, with any entity otherwise qualified to be a Commission licensee being eligible to hold a partitioned license.³⁴ Similarly, interested parties should be permitted to form consortia to bid for market area licenses, with plans either to operate paging systems within an MTA on a joint basis or to subdivide the service area upon obtaining the market area license. These options will help to provide operators with smaller service areas with opportunities not only to maintain their existing operations but to obtain some flexibility to modify or increase their respective service areas.³⁵ This may help to alleviate some of the dislocation that otherwise will result as part of the transition to market area licensing.

³³ Notice, ¶ 34.

³⁴ To the extent technically feasible, licensees also should be permitted to disaggregate their licensed spectrum.

³⁵ Of course, the market area licensee would be permitted to enter into partitioning agreements on a voluntary basis, but would not be obligated to do so.

As the Commission notes, paging services currently are not covered by any sort of blanket copyright license with Rand McNally in connection with the use of MTAs.³⁶ PCIA will undertake to negotiate with Rand McNally concerning an appropriate arrangement to permit the use of MTAs in connection with whatever geographic licensing plan is adopted by the Commission for Part 22 and Part 90 paging frequencies. PCIA will keep the Commission advised with respect to the progress of those negotiations and the nature of the arrangements ultimately implemented.

B. Incumbent Operators Should Receive Full Protection for Their Authorized Facilities

PCIA strongly endorses the Commission's basic proposal that, "under any geographic licensing scheme adopted in this proceeding, all incumbent systems will be entitled to continue operating under existing authorizations with full protection from interference."³⁷ As part of the Commission's plan for protecting incumbent operations, the *Notice* also contemplates:

- Incumbent licensees would not be allowed to expand beyond their interference contours and into the geographic licensee's territory without the consent of the geographic licensee, although an incumbent operator and the holder of the market area authorization would be free to enter into voluntary arrangements permitting the incumbent to undertake expansion within a geographic area.³⁸

³⁶ *Id.*, ¶ 35.

³⁷ *Id.*, ¶ 22.

³⁸ *Id.*, ¶¶ 37, 39.

- Geographic licensees and incumbents would be free to enter into voluntary negotiations regarding the purchase or relocation of the incumbents' facilities.³⁹
- If an incumbent fails to construct, discontinues operation, or otherwise has its license terminated, the geographic area covered by the subject authorization would revert automatically to the market area licensee.⁴⁰
- To the extent geographic licensing is adopted, the Commission would eliminate the finder's preference.⁴¹

PCIA agrees with the majority of the Commission's recommendations for ensuring that already authorized facilities are fully protected as the industry makes the transition to market-based licensing. Specifically, an incumbent operator should not be able to expand its authorized facilities in any way that would increase the interference contour, unless the incumbent and the market area licensee have reached agreement permitting such modifications. Similarly, a market area licensee would be permitted to negotiate with an incumbent operator about relocation or a buy-out, although the incumbent would be under no obligation to accept such an offer. If the incumbent licensee reduces its scope of operations in any way, the protected interference contour would be commensurately reduced, and the resulting non-grandfathered areas would be available to the market area licensee for expansion of its own facilities.

PCIA believes that incumbent licensees should have the following rights and abilities:

- To operate their systems consistent with all outstanding, effective authorizations;

³⁹ *Id.*, ¶ 22.

⁴⁰ *Id.*

⁴¹ *Id.*

- To be protected from interference based upon their interference contours; and
- To make modifications, as long as no interference is caused to the market area licensee, the composite grandfathered interference contour is not increased, the incumbent licensee makes all necessary filings with the FCC, and the incumbent licensee serves copies of all technical system changes, including minor modifications, on the market licensee.

Under this plan, the incumbent licensee could maintain its operations with some limited modification flexibility. At the same time, the geographic licensee would be notified of any changes in the parameters of the system, which would enhance its ability to operate its market area system most effectively and to protect the incumbent's facilities from interference.

Finally, PCIA supports the Commission's proposal to eliminate the finder's preference to the extent that geographic licensing is adopted. The finder's preference policy simply has no rational applicability where authorizations are issued on a market area basis.

C. Geographic Paging Licensees Should Be Required To Meet Minimum Coverage Requirements

The Commission has tentatively concluded that "geographic licensees should be required to provide coverage to one-third of the population within three years of initial license grant and to two-thirds of the population by the end of five years, or in the alternative, provide substantial service to the geographic license area at five years."⁴² The *Notice* further proposes that, "regardless of the extent to which their respective service areas

⁴² *Notice*, ¶ 41.